

Serial No.: 10/757,626
Final Office Action Dated: May 13, 2008
Advisory Action Dated: July 11, 2008
Appeal Brief filed on September 4, 2008

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants: Janghwan Lee

Examiner: Helen Shibru

Serial No: 10/757,626

Group Art Unit: 2621

Filed: January 14, 2004

Docket: PU030211

For: APPARATUS AND METHOD FOR COMMUNICATING STOP AND
PAUSE COMMANDS IN A VIDEO RECORDING AND PLAYBACK SYSTEM

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APPEAL BRIEF

Appellant submits this Appeal Brief to the Board of Patent Appeals and Interferences on appeal from the decision of the Examiner of Group Art Unit 2621 dated May 13, 2008, finally rejecting claims 21-23, 28-33, and 37-40.

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1. Real Party in Interest

The real party in interest is THOMSON LICENSING S.A. 46 quai A. Le Gallo
F-92100 Boulogne Billancourt, France

2. Related Appeals and Interferences

None

3. Status of Claims

Claims 21-23, 28-33, and 37-40 are pending. Claims 21-23, 28-33, and 37-40 stand rejected and are under appeal. Appellant's Claims 1-20 have been cancelled without prejudice. Claims 24-27 and 34-36 were withdrawn from consideration due to a restriction requirement.

A copy of the Claims 21-23, 28-33, and 37-40 is presented in Section 8 below.

4. Status of Amendments

An Amendment under 37 CFR §1.111, filed with the PTO on November 13, 2007 in response to a non-final Office Action dated August 22, 2007, was entered. An Amendment under 37 CFR §1.116, filed with the PTO on June 23, 2008 in response to a final Office Action dated May 13, 2008, was entered. No Responses/Amendments were filed subsequent to the above Amendment filed on June 23, 2008. An Advisory Action dated July 11, 2008, to which this appeal brief is directed, is currently pending.

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5. **Summary of Claimed Subject Matter**

Independent Claim 21 is directed to “[a] method for communicating stop and pause commands in a video recording and playback system” (Claim 21, preamble).

The subject matter of the first element (beginning with “in response to a pause command”) recited in Claim 21 is described, e.g., at: page 15, lines 29-31 and page 16, lines 3-8. Moreover, the subject matter of the first element of Claim 21 involves, e.g.: elements 430 and 450 of FIG. 4.

The subject matter of the second element (beginning with “in response to a stop command”) recited in Claim 21 is described, e.g., at: page 15, lines 17-28. Moreover, the subject matter of the second element of Claim 21 involves, e.g.: elements 420 and 460 of FIG. 4.

Independent Claim 28 is directed to “[a]n apparatus for a video recording and playback system” (Claim 28, preamble).

The subject matter of the first element (beginning with “a storage device”) recited in Claim 28 is described, e.g., at: page 9, lines 6-9; page 12, lines 12-18. Moreover, the subject matter of the first element of Claim 28 involves, e.g.: element 210 of FIG. 1.

The subject matter of the second element (beginning with “a controller”) recited in Claim 28 is described, e.g., at: page 13, lines 19-26. Moreover, the subject matter of the second element of Claim 28 involves, e.g.: element 283 of FIG. 1.

The subject matter of the third element (beginning with “a processor”) recited in Claim 28 is described, e.g., at: page 13, lines 19-32. Moreover, the subject matter of the third element of Claim 28 involves, e.g.: element 220 of FIG. 1.

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The subject matter of the fourth element (beginning with "in response to a pause command") recited in Claim 28 is described e.g., at: page 13, lines 19-32; and page 16, lines 3-8. Moreover, the subject matter of the fourth element of Claim 28 involves, e.g. element 220 of FIG. 1; element 559 of FIG. 5 and element 582 of FIG. 6.

The subject matter of the fifth element (beginning with "in response to a stop command") recited in Claim 28 is described, e.g., at: page 13, lines 19-32; and page 15, lines 17-28. Moreover, the subject matter of the fifth element of Claim 28 involves, e.g.: element 220 of FIG. 1; element 559 of FIG. 5 and element 582 of FIG. 6.

Independent Claim 37 is directed to "[a] video system" (Claim 37, preamble).

The subject matter of the first element (beginning with "a sender including at least an input") recited in Claim 37 is described, e.g., at: page 8, line 31 - page 9, line 9. Moreover, the subject matter of the first element of Claim 37 involves, e.g.: element 150 of FIG. 1.

The subject matter of the second element (beginning with "said sender responsive to") recited in Claim 37 is described, e.g., at: page 8, lines 9-13. Moreover, the subject matter of the second element of Claim 37 involves, e.g.: element 150 of FIG. 1.

The subject matter of the third element (beginning with "said receiver including at least") recited in Claim 37 is described, e.g., at: page 18, lines 1-4. Moreover, the subject matter of the third element of Claim 37 involves, e.g.: element 190 of FIG. 1.

The subject matter of the fourth element (beginning with "a user operable control device") recited in Claim 37 is described, e.g., at: page 5, lines 3-6; page 6, line 24 - page

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7, line 10; and page 14, lines 13-16. Moreover, the subject matter of the fourth element of Claim 37 involves, e.g.: element 160 of FIG. 1.

The subject matter of the fifth element (beginning with “wherein in response to a received pause command”) recited in Claim 37 is described, e.g., at: page 15, lines 14 – 28. Moreover, the subject matter of the fifth element of Claim 37 involves, e.g. elements 150 and 190 of FIG. 1; element 559 of FIG. 5; and element 582 of FIG. 6.

The subject matter of the sixth element (beginning with “wherein in response to a determination by the receiver”) recited in Claim 37 is described, e.g., at: page 15, line 29 – page 16, line 12; page 19, lines 24-34; and page 6, line 24 – page 7, line 10. Moreover, the subject matter of the sixth element of Claim 37 involves, e.g.: element 190 of FIG. 1; element 559 of FIG. 5; and element 582 of FIG. 6.

6. Grounds of Rejection to be Reviewed on Appeal

Claims 21-23, 28-33, and 37-40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,732,067 to Aotake (hereinafter “Aotake”).

The preceding rejection under 35 U.S.C. §102(b) is presented for review in this Appeal with respect to Claims 21-23, 28-33, and 37-40, as argued with respect to independent Claims 21, 28 and 37.

Regarding the grouping of the claims, Claims 22-23 stand or fall with Claim 21, Claims 29-33 stand or fall with Claim 28, and Claims 38-40 stand or fall with Claim 37, due to their respective dependencies.

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7. **Argument**

A. **Introduction**

In general, the present invention is directed to communicating stop and pause commands in a video recording and playback system (Title; page 1, lines 6-8). As disclosed in the Appellant's specification at page 1, line 28 – page 2, line 9:

Another feature desired by consumers is the ability to stop the presentation of a show. The stop command differs from the pause command (also referred to as "freeze"). While both commands typically stop the presentation of moving pictures, the pause command results in display of a still video frame of the motion picture. The stop command stops the presentation but does not display a still video frame of the moving picture. Implementing both the stop and the pause features can be problematic for recording and playback systems. In most cases, the decoder in the display device is not under the control of the recorder and playback system. If the recorder/player stops sending frames in response to both the stop and pause commands, it is difficult for the decoder to distinguish between the stop and pause commands. Furthermore, for a pause command, the decoder is typically unable to determine how many times a particular picture will be displayed. This uncertainty interferes with the display order of the pictures being transferred to the display device.

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Therefore, a need exists for improved systems and methods for implementing the STOP and PAUSE features for such devices.

Advantageously, the present principles provide “[a] method for communicating stop and pause commands in a video recording and playback system” (Claim 21), “[a]n apparatus for a video recording and playback system” (Claim 28) and “[a] video system” (Claim 37).

The claims of the pending invention include novel features not shown in the cited references and that have already been pointed out to the Examiner. These features provide advantages over the prior art and dispense with prior art problems such as those described above with reference to the Appellant’s specification.

It is respectfully asserted that independent Claims 21, 28 and 37 are each patentably distinct and non-obvious over the cited reference in their own right. For example, the below-identified limitations of independent Claims 21, 28 and 37 are not shown in the cited reference, either taken singly or in any combination. Moreover, these Claims are distinct from each other in that they are directed to different implementations and/or include different limitations. For example, Claim 21 is directed to a method, while Claim 28 is directed to an apparatus for a video recording and playback system, and Claim 37 is directed to a video system. Accordingly, each of independent Claims 21, 28 and 37 represent separate features/implementations of the invention that are separately novel and non-obvious with respect to the prior art and to the other claims. As such, independent Claims 21, 28 and 37 are separately patentable and are each presented for review in this appeal.

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B. Whether Claims 21-23, 28-33, and 37-40 are Anticipated Under 35 U.S.C. §102(b) With Respect To U.S. Pat. No. 5,732,067 to Aotake

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Examiner rejected Claims 21, 28 and 37 as being unpatentable over U.S. Patent No. 5,732,067 to Aotake (hereinafter “Aotake”). The Examiner contends that Aotake shows all the limitations recited in Claims 21, 28 and 37.

Aotake is directed to an “optical disk having recorded thereon a simplified playback control script which is independent of the CPU of the information recording/reproducing apparatus used to record and/or reproduce the optical disk” (Aotake, Title). In further detail, Aotake discloses the following in his Abstract:

An information recording medium having recorded thereon picture information and/or speech information, a plurality of items consisting of the picture information and/or the speech information, and reproduction control information comprised of a plurality of lists for controlling the reproduction of the items, wherein at least a portion of the lists includes item information specifying one or more items reproduced in accordance with the lists and pointers represented by an offset from a leading end of

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the reproduction control information specifying another list to be linked, and wherein at least one of the lists is a first list including the item information specifying the one or more items, a plurality of pointers associated with plural lists branched according to a user selection and a plurality of region data defining regions of alternatives for menu display of the contents of the pointers according to a priority sequence.

It will be shown herein below that the limitations of Claims 21, 28 and 37 reproduced herein are not shown in Aotake, and that Claims 21, 28 and 37 should be allowed.

B1. Claims 21-23, 28-33, and 37-40

Initially, it is respectfully pointed out to the Examiner that Claims 22-23, 29-33 and 38-40 respectively depend from Claims 21, 28 and 37 and, thus, include all the limitations of Claims 21, 28 and 37, respectively.

It is respectfully asserted that Aotake does not teach or suggest the step of: "in response to a pause command, setting a trick mode indicator of a last frame of said video data to be displayed to indicate a freeze trick mode" as recited in both Claims 21 and 28.

Moreover, it is respectfully asserted that Aotake does not teach or suggest "wherein in response to a received pause command, said sender sets a trick mode indicator of a last frame of said packetized video data to be communicated to said receiver to indicate a freeze trick mode" as recited in Claim 37.

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Only one passage of Aotake was cited against the above recited limitations of Claims 21, 28 and 37, namely col. 28, lines 39-44. This passage recites:

[I]f the stop key is thrust, the playback control ceases to operate to return to the initial state. If the pause key is thrust, playback is paused (transiently halted). If the pause key is thrust with the moving picture, the picture is halted, that is becomes a still picture.

The passage from Aotake cited above merely describes the pause and stop functions in very broad and general terms. However, this passage does not teach or suggest all of the elements found in the language of Claims 21, 28 and 37. Particularly, Aotake fails to teach "setting a trick mode indicator", let alone "setting a trick mode indicator of a last frame of video data to be displayed to indicate a freeze trick mode", as recited in Claims 21 and 28. Moreover, Aotake fails to teach "sets a trick mode indicator", let alone "sets a trick mode indicator of a last frame of said packetized video data to be communicated to said receiver to indicate a freeze trick mode", as recited in Claim 37.

In the Advisory Action dated July 11, 2008, the Examiner stated "Aotake discloses if a pause key is thrust with a moving picture, the picture becomes a still picture (referring to freeze trick mode)." However, even if the cited passage in Aotake does indeed refer to a freeze trick mode as the Examiner contends, it does not teach or suggest "setting a trick mode indicator of a last frame of video data to be displayed" in order to

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indicate a freeze trick mode. In other words, while the systems and methods described in Aotake may be capable of implementing a freeze trick mode, they do not accomplish such by "setting a trick mode indicator of a last frame of video data to be displayed".

In contrast to the systems and methods described by Appellant, Aotake uses playback control information to implement a freeze trick mode, along with a variety of other functions (i.e. stop, pause, fast forward, rewind, cancel, next, previous, etc.) (Abstract; col. 1, lines 52-66; col. 28, lines 17-47). The playback control information is comprised of a control program and a plurality of lists containing pointers (col. 5, lines 9-21). The control program is stored in memory and uses the item information contained in the predetermined lists to control the playback of video information on an optical disk (col. 5, lines 33-39). Thus, Aotake does not teach or suggest "setting a trick mode indicator of a last frame of video data to be displayed" in order to indicate a freeze trick mode, but rather teaches a program which reads in pointers from a plurality of lists to indicate a freeze trick mode.

Therefore, for at least the reasons stated above, Aotake does not teach "in response to a pause command, setting a trick mode indicator of a last frame of said video data to be displayed to indicate a freeze trick mode" as recited in both Claims 21 and 28. Likewise, it is respectfully asserted that Aotake does not teach or suggest "wherein in response to a received pause command, said sender sets a trick mode indicator of a last frame of said packetized video data to be communicated to said receiver to indicate a freeze trick mode" as recited in Claim 37.

For similar reasons discussed above, it is respectfully asserted that Aotake does

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not teach or suggest the steps of: "in response to a stop command, clearing a trick mode indicator of a last frame of video data to be displayed" as recited in both Claims 21 and 28.

Moreover, it is respectfully asserted that Aotake does not teach or suggest "wherein... if a trick mode indicator of the last received frame of video data is clear, the display of frames of said video data on the display is stopped" as recited in Claim 37.

Once again, the only passage cited by the Examiner in Aotake as teaching these limitations was col. 28, lines 39-44. As stated before, this passage merely describes the pause and stop functions in very broad terms, and thus, clearly fails to teach or suggest all of the elements found in the above cited language of Claims 21, 28 and 37. Particularly, Aotake fails to teach or suggest "clearing a trick mode indicator", let alone "clearing a trick mode indicator of a last frame of video data to be displayed" as recited in Claims 21 and 28. Moreover, Aotake fails to teach "clears a trick mode indicator", let alone "clears a trick mode indicator of a last frame of said packetized video data to be communicated to said receiver", as recited in Claim 37.

In the Advisory Action referred to above, the Examiner stated "Aotake further discloses if a stop key is thrust, the playback control ceases to operate to return to the initial state (referring to clearing a trick mode indicator)." However, Aotake does not disclose that the initial state involves setting a trick mode indicator, let alone that returning to the initial state involves clearing a trick mode indicator. In other words, it is not possible that Aotake teaches clearing a trick mode indicator, since it does not teach setting a trick mode indicator in the first place. In fact, Aotake does not refer to clearing

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a "field" or clearing a "trick mode indicator" for any reason at all, let alone for the purpose of returning to the initial state. Moreover, the Examiner is incorrect in assuming that a "return to the initial state" specifically refers to "clearing a trick mode indicator".

When a stop key is thrust, there are many ways to communicate a command for ceasing playback control and returning to the initial state. It is unreasonable for the Examiner to read the limitations of Claims 21, 28 and 37 into this passage. Appellant's invention teaches one specific way to communicate a stop command, e.g. formatting the video data to include a trick mode indicator and clearing this indicator in response to receiving a stop command. However, there are many other ways to communicate stop commands and the Examiner is wrong to assume that the cited passage in Aotake (col. 28, lines 39-44) teaches the specific method of utilizing a trick mode indicator as described in Appellant's claims.

The method by which Aotake communicates pause commands is described above. Aotake applies this same method to communicating stop commands, as well as all of the other types of commands. Thus, a control program works in conjunction with a plurality of lists to carry out the stop function (col. 5, lines 33-39). This method of communicating a stop command is clearly different from Appellant's method of communicating a stop command which operates by "clearing a trick mode indicator of a last frame of video data to be displayed".

Therefore, for at least the reasons stated above, Aotake does not teach "in response to a stop command, clearing a trick mode indicator of a last frame of video data to be displayed" as recited in both Claims 21 and 28. Likewise, it is respectfully asserted

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that Aotake does not teach or suggest "wherein... if a trick mode indicator of the last received frame of video data is clear, the display of frames of said video data on the display is stopped" as recited in Claim 37.

Further evidence that Aotake does not teach or suggest "setting/clearing a trick mode indicator of a last frame of said video data to be displayed" can be implied from the fact that FIG. 7 of Aotake does not disclose a field for a trick mode indicator. As evidenced by the Appellant's specification, the "trick mode indicator" recited in Appellant's claims is essentially a data field that is included in the format of packetized video data which is to be displayed (page 2, lines 15-23; page 16, line 13 – page 17, line 20). Appellant's figures disclose a sample format for the packetized video data which includes a field for the trick mode indicator (FIG. 5, 559; FIG. 6, 582). Aotake also includes a figure which discloses a sample format for the data packets described in its system (FIG. 7). However, FIG. 7 does include a field for a trick mode indicator. Furthermore, the specification in Aotake describes the data format at col. 8, lines 20-35, and this passage also fails to disclose a format which includes a trick mode indicator. Therefore, it is respectfully asserted that Aotake does not teach the above recited limitations of Claims 21, 28 and 37.

All remaining claims depend from either Claim 21, 28, or 37, or a claim which itself is dependent from one of these claims. Thus, all remaining claims include all of the elements found in the claims from which they depend. Accordingly, all remaining claims are patentably distinct over the cited reference for at least the reasons set forth above.

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C. Conclusion

At least the above-identified limitations of the pending claims are not disclosed or suggested by the teachings of the cited references. Accordingly, it is respectfully requested that the Board reverse the rejections of Claims 21-23, 28-33, and 37-40 under 35 U.S.C. §102(b).

Please charge the amount of \$510.00, covering fee associated with the filing of the Appeal Brief, to **Thomson Licensing Inc., Deposit Account No. 07-0832**. In the event of any non-payment or improper payment of a required fee, the Commissioner is authorized to charge **Deposit Account No. 07-0832** as required to correct the error.

Respectfully submitted,
Janghwan Lee

BY:


Jorge Tony Villabon
Attorney for the Appellant
Registration No. 52,322
(609) 734-6445

September 4, 2008

Patent Operations
Thomson Licensing LLC
P.O. Box 5312
Princeton, New Jersey 08543-5312

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8. CLAIMS APPENDIX

1-20 (Cancelled)

21. (Original) A method for communicating stop and pause commands in a video recording and playback system, comprising the steps of:

in response to a pause command, setting a trick mode indicator of a last frame of video data to be displayed to indicate a freeze trick mode; and

in response to a stop command, clearing a trick mode indicator of a last frame of video data to be displayed.

22. (Original) The method of claim 21, further comprising communicating said video data to a display device.

23. (Original) The method of claim 21, wherein said video data comprises packetized data.

24. (Withdrawn) A method for determining stop and pause commands in a video recording and playback system, comprising the steps of:

receiving video data;

determining when video data is no longer being received; and

in response to a determination that video data is no longer being received, examining a trick mode indicator of a last frame of video data received and if a trick mode indicator of the last received frame of video data indicates a freeze trick mode, repeatedly displaying the last received frame of video data on a display, and if a trick mode indicator of the last received frame of video data is clear, stopping the display of frames of said video data on the display.

25. (Withdrawn) The method of claim 24, further comprising decoding said received video data.

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26. (Withdrawn) The method of claim 24, further comprising configuring said received video data for display.
27. (Withdrawn) The method of claim 24, wherein said video data comprises packetized data.
28. (Original) An apparatus for a video recording and playback system, comprising:
 a storage device for storing at least video data;
 a controller in communication with said storage device for controlling the selection of stored video data to be displayed;
 a processor in communication with said controller, said processor configured to perform the steps of:
 in response to a pause command, setting a trick mode indicator of a last frame of said video data to be displayed to indicate a freeze trick mode; and
 in response to a stop command, clearing a trick mode indicator of a last frame of said video data to be displayed.
29. (Original) The apparatus of claim 28, wherein said trick mode indicator comprises a trick mode flag of an MPEG-2 compliant video packet.
30. (Original) The apparatus of claim 28, wherein said video data comprises frames of video data having a packet format.
31. (Original) The apparatus of claim 28, wherein said packet format comprises an MPEG-2 compliant video packet format.
32. (Original) The apparatus of claim 30, wherein said packet format comprises an DSM-CC compliant video packet format.

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33. (Original) The apparatus of claim 28, wherein said apparatus comprises a personal video recording device.

34. (Withdrawn) An apparatus for a video recording and playback system, comprising:

a decoder for decoding received video data;

a processor in communication with said decoder, said processor configured to perform the steps of:

determining when video data is no longer being received; and

in response to a determination that video data is no longer being received,

examining a trick mode indicator of a last frame of video data received and if a

trick mode indicator of the last received frame of video data indicates a freeze

trick mode, repeatedly displaying the last received frame of video data on a

display, and if a trick mode indicator of the last received frame of video data is

clear, stopping the display of frames of said video data on the display.

35. (Withdrawn) The apparatus of claim 34, wherein said apparatus comprises a display device.

36. (Withdrawn) The apparatus of claim 34, wherein video data is no longer communicated to said apparatus in response to a user command.

37. (Original) A video system including:

a sender including at least an input for receiving video data and an output for communicating packetized video data to a receiver;

said sender responsive to user commands;

said receiver including at least an input for receiving said packetized data and an output for providing corresponding video images formatted for display; and

a user operable control device for communicating said user commands to said sender, said commands including at least a pause command and a stop command;

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wherein in response to a received pause command, said sender sets a trick mode indicator of a last frame of said packetized video data to be communicated to said receiver to indicate a freeze trick mode and in response to a received stop command, said sender clears a trick mode indicator of a last frame of said packetized video data to be communicated to said receiver; and

wherein in response to a determination by the receiver that packetized video data is no longer being received, the receiver examines a trick mode indicator of a last frame of received video data and if a trick mode indicator of the last received frame of video data indicates a freeze trick mode, the last received frame of video data is repeatedly displayed on a display, and if a trick mode indicator of the last received frame of video data is clear, the display of frames of said video data on the display is stopped.

38. (Original) The system of claim 37, further comprising a display for displaying frames of said video data.

39. (Original) The system of claim 37, wherein said system comprises a high definition television system.

40. (Original) The system of claim 37, wherein said sender comprises a personal recording device and said receiver comprises an MPEG compliant video decoder.

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Advisory Action Dated: July 11, 2008
Appeal Brief filed on September 4, 2008

PATENT
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9. RELATED EVIDENCE APPENDIX

None.

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10. RELATED PROCEEDINGS APPENDIX

None